IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE V.K.MOHANAN

FRIDAY, THE 24TH AUGUST 2007 / 2ND BHADRA 1929

Crl.MC.No. 5271 of 2003(D)

CC.20/2001 of JUDL. MAGISTRATE OF FIRST CLASS-I, KOCHI

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PETITIONER: 2ND ACCUSED:

SHIJI MENDEZ, S/O. FRANCIS MENDEZ,
AGED 24 YEARS, KALANGARA HOUSE,
BOAT JETTY ROAD, KOCHI-23.

BY ADV. SRI.C.K.PAVITHRAN

RESPONDENTS: COMPLAINANT & STATE:

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1. SUB INSPECTOR OF POLICE,
FORT KOCHI.

2. STATE OF KERALA,
REPRESENTED BY PUBLIC PROSECUTOR,
HIGH COURT OF KERALA, ERNAKULAM.

ADDL.R3: ALI, S/O. MUNDOTH BEERAVU, NO.2/368,
THURUTHY, FORT KOCHI VILLAGE, KOCHI TALUK.

(IMPLEADED AS PER ORDER DATED 1-8-2006 IN CRL.M.A.4127/06)

BY PUBLIC PROSECUTOR SMT. MEERA.

THIS CRIMINAL MISC. CASE HAVING BEEN FINALLY HEARD ON 21/08/2007, THE COURT ON 24/08/2007 PASSED THE FOLLOWING:

V.K.MOHANAN, J.

Crl.M.C. No.5271 of 2003

Dated 24th August 2007

ORDER

The 2nd accused in C.C.No.20/2001 of the Judicial Magistrate of the Ist Class- I, Kochi, is the petitioner herein, who filed the above Crl.M.C. with a prayer to call for the records leading to Annexure II and III in C.C.20/2001 of JFCM-I, Kochi and to quash the same to the extent of charge sheeting the petitioner/2nd accused. The above calander case is instituted upon the final report filed by the Sub Inspector of Police, Fort Kochi police station after investigation in crime No.133/1999 of the same police station. The said crime was registered on the basis of the complaint received under section 156(3) of Cr.P.C. from the JFCM-I, Kochi.

2. The compliant is produced along with the above Crl.M.C. as annexure-I. According to annexure-I complaint, the additional 3rd respondent who is the de facto complainant, had purchased Vedeocon Fridge, Mixie etc. from the shop of Ist accused offering to pay the price amount in monthly instalments. The total value of the articles was Rs.15,695/- and he had paid a sum of

Rs.5000/- on 29-1-1997 on the date of of the purchase itself and agreed to pay the balance amount in 10 equal monthly instalments. It is further alleged that the de facto complainant had entrusted with the Ist accused a blank cheque bearing No.435405 drawn on canara bank, Fort Kohi, towards security for due payment of monthly instalments and thereafter he had paid the entire amounts in instalments without any default and the last instalment was paid on 30-1-98. It is the further case of the complainant that even after clearance of the entire due amount, the accused encashed the cheque endorsing the amount as of Rs.10,200/- and received the said amount from the bank on 28-7-1999. Thus, according to the de facto complainant, the accused with the intention of cheating the de facto complainant and thereby amassed money illegally, which was not actually payable and due to the accused. It is also specifically averred in the complaint that it was the 3rd accused who encashed the cheque after putting his signature in the bank records. According to the de facto complainant, the above act was as a result of a concerted acts of the accused.

3. I have heard the counsel for the petitioner. Though

notice was served on the additional 3rd respondent, who is the de facto complainant, he did not enter appearance. I heard the learned Public Prosecutor who representing the State as well as the complainant in the above case.

4. The learned counsel appearing for the petitioner submitted that the petitioner herein is the 2nd accused against whom there is no allegations. True, there is no specific allegation attributed to him in the commission of the offence except the bald allegation. On a perusal of the records, especially, annexure I complaint, it is seen that even according to the de facto complainant, the cheque leaf in question was entrusted with the Ist accused and the same was encashed by the 3rd accused and no overt act is pleaded against the petitioner/A2 attributing any role to him during such transaction. What is stated in the complaint is that the petitioner as well as the 3rd accused are the employees of the Ist accused.

5. On receiving annexure I complaint under section 156 (3) of Cr.P.C., the Ist respondent had registered the above crime and conducted investigation and thereafter filed annexure III final report in crime No.133/99. On a perusal of

the annexure III report, nothing is discernible to make the petitioner herein as an accused or any specific role played by him in the commission of the above offences. Going by annexure I complaint and annexure-III report, it can be seen that the first part of the transaction is between the de facto complainant and the Ist accused which is purely of a civil nature, especially when the allegation is that the de facto complainant had entrusted the cheque leaf with the Ist accused towards security for the articles purchased. It is the second part of the transaction, during which the 3rd accused presented the cheque and drawn the amount. There is no averments or material, to connect the petitioner with any of such transaction. I am unable to draw any adverse conclusion attributable against the petitioner/A2 based upon the materials on record. Being an employee of the Ist accused no vicarious liability can be fastened against A2/petitioner unless some allegations of overt act played by him. No materials available on record even after the investigation and on filing of the final report to connect the petitioner with the alleged offences. Therefore, there is no meaning in allowing to continue the criminal proceedings

against the petitioner herein and to make him to undergo the ordeal of trial. Therefore, I am of the view that the Crl.M.C. can be allowed.

In the result, annexure-II and III in C.C.No.20/2001 pending before the JFCM-I Kochi and all proceedings thereon to the extent it against the petitioner/A2 are quashed and to that extent , the Crl.M.C. is allowed.

V.K.MOHANAN, JUDGE.

Kvm/

V.K.MOHANAN, J.

CRL.M.C.No.5271 OF 2003

Order

Dated: 24-8-1007.